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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,815	01/22/2004	Tette van der Lende	2183-6293US	4997

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EXAMINER

HAGOPIAN, CASEY SHEA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/763,815

Applicant(s)

VAN DER LENDE, TETTE

Examiner

Casey Hagopian

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/22/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Receipt is acknowledged of applicant's Oath filed 5/21/2004.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims are drawn to an animal feed, a premix, and a method of making comprising the feed enriched in arginine and comprising the amino acids, threonine, and tryptophan in amounts relative to lysine. In the instant specification, there is mention of arginine, lysine, methionine, cysteine, threonine, and tryptophan, however it is unclear which of these ingredients the animal feed specifically comprises as well as their amounts. Also, the phrase "methionine + cysteine" is mentioned on page 5 of the instant specification accompanied by preferred ranges relative to lysine, however there is no clear explanation of what the amount breakdown is of methionine alone and cysteine alone. For these reasons, it would be difficult for one skilled in the relevant art to make and use the claimed animal feed, a

premix, and a method of making comprising the feed enriched in arginine and comprising the amino acids, threonine, and tryptophan in amounts relative to lysine.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are drawn to an animal feed, a premix, and a method of making comprising the feed enriched in arginine and comprising the amino acids methionine + cysteine, threonine, and tryptophan in amounts relative to lysine. As the claims are written, it is unclear if arginine as well as lysine is part of the composition. It is also confusing that, as presented, methionine and cysteine are combined to suggest a single component. If applicant intends for arginine and lysine to both be included in the composition, it is suggested that the claim be amended to perhaps, "An animal feed comprising arginine, lysine, methionine, cysteine, threonine, and tryptophan, wherein arginine is in the amount of at least 200 mg per kg body weight, lysine is in the amount of..." so that it is clear which ingredients are included in the composition as well as their amounts. As such the claims as written are deemed indefinite and clarification and/or corrections are requested.

6. Claims 4 and 5 recite the limitation "the total arginine/lysine (w/w) content" in line 2 of the claims. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 7 recites the limitation "the total amount of lysine" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 1615

8. Claim 8 recites the limitation "the amount of Ca<sup>2+</sup>" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. (US 2002/0051844 A1) in view of Mahan, "Digestibility of soybean meals collected at four periods from a soybean processor (Cargill) in Ohio". Wilson teaches animal food compositions and methods for increasing the reproductive performance of breeding populations of swine (abstract). Wilson also teaches incorporating any animal feed blend known in the art including rapeseed meal, cottonseed meal, soybean meal, and cornmeal as well as amino acids including arginine, lysine, methionine, threonine, tryptophan, and cysteine (paragraph 0031). Wilson also teaches several methods of

Art Unit: 1615

administration ranging from feeding the composition to the animals daily for their lifetime, to feeding the composition to an animal before and/or during pregnancy and/or during lactation, and so on (paragraph 0030).

Wilson does not teach specific amounts of the amino acids.

Mahan teaches that soybean meal, a well-known feed material, naturally comprises amino acids including arginine, lysine, methionine, threonine, tryptophan, and cysteine and provides percentage amounts for each amino acid (Table 2). One of ordinary skill in the art would have been motivated to include natural sources of amino acids and/or the amino acids themselves and, if necessary, optimize the composition by way of routine experimentation. Absent of unexpected results, a practitioner would reasonably expect an animal feed composition to provide the same result as suggested by Wilson; to increase the reproductive performance of breeding populations of swine. Thus, it would have been obvious to optimize the animal feed composition taught by Wilson.

### ***Pertinent Art***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chalupa et al. (USPN 3,949,090) teaches animal feed compositions and methods thereof comprising well-known feed products including casein, soybean meal, and fish meal as well as amino acids including cysteine, methionine, lysine, threonine, arginine, and tryptophan and amounts thereof (columns 3-4).

***Conclusion***

13. All claims have been rejected; no claims are allowed.

***Correspondence***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Casey Hagopian whose telephone number is 571-272-6097. The examiner can normally be reached on M-F from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at 571-272-0588. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Casey Hagopian  
Examiner  
Art Unit 1615



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